

UNITED STATES TAX COURT
WASHINGTON, DC 20217 **PA**

CROSS REFINED COAL, LLC,)	
USA REFINED COAL, LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 19502-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Now pending before the Court are two discovery motions--petitioner's motion to compel production of documents (Doc. 45) and respondent's motion to compel production of documents (Doc. 50), which motions remained unresolved after the Court's orders dated May 22 and May 24, 2019 (Docs. 62, 65).

By our order dated May 24, 2019 (Doc. 65), we ordered the parties to file a joint status report no later than June 3, 2019, indicating the extent, if any, to which the parties' disagreements on the still-pending motions to compel (Docs. 45 and 50) have been resolved or narrowed.

In compliance with that order, on June 3, 2019, the parties filed their joint status report (Doc. 66) stating that they have reached an agreement as to most of the information sought by the motions to compel. The parties have agreed to utilize a "quick peek" procedure for 125 documents sought by respondent's motion to compel (Doc. 50), under which procedure petitioner will make the 125 documents available to respondent for a "quick peek" review. Respondent retains the right, after making that review, to ask the Court to compel the production of some or all of those 125 documents; but petitioner evidently expects that, after

making that review, respondent will agree that the documents need not be produced.

The Court commends the parties for their cooperation in attempting to resolve these disputes. Consistent with the parties' agreement, it is

ORDERED that, pursuant to Federal Rule of Evidence 502(d), in this litigation and in any other State or Federal proceeding, (i) petitioner does not waive privilege by making the 125 documents available to respondent for the "quick peek" procedure, and (ii) petitioner's agreeing to release its privilege claims on any of the 125 documents after the "quick peek" procedure shall not result in a subject matter waiver. It is further

ORDERED that, in view of the parties' agreement, petitioner's motion to compel (Doc. 45) is denied as withdrawn. It is further

ORDERED that respondent's motion to compel (Doc. 50) is denied in part as withdrawn with respect to all but the 125 documents as to which the parties have not reached agreement, and that for the time being respondent's motion remains pending as to those 125 documents. It is further

ORDERED that, no later than June 21, 2019, the parties shall file a joint status report (or, if that is not expedient, then separate reports) that shall state the extent to which respondent's motion to compel (Doc. 50) has been fully resolved by the parties and, if it has not been fully resolved, shall propose a schedule for further proceedings as to that motion.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
June 5, 2019